

Exhibit R - Deposition of Defendants' Police Practices Expert Spencer Fomby

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

Page 79

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss:
4 COUNTY OF CLARK)

5 I, Blanca I. Cano, CCR No. 861, RPR, do hereby
6 declare:

7 That I reported the taking of the deposition of
8 SPENCER FOMBY, commencing on Tuesday, February 18, 2025.

9 That prior to being examined, the witness was
10 by me duly sworn to testify the truth, the whole truth,
11 and nothing but the truth;

12 That I thereafter transcribed my said shorthand
13 notes into typewriting and that the typewritten
14 transcript of said deposition is a complete, true, and
15 accurate record of testimony provided by the witness at
16 said time to the best of my ability.

17 I further certify (1) that I am not a relative,
18 employee, or independent contractor of counsel of any of
19 the parties; nor a relative, employee or independent
20 contractor of the parties involved in said action; nor a
21 person financially interested in the action; nor do I
22 have any other relationship with any of the parties or
23 with counsel of any of the parties involved in the
24 action that may reasonably cause my impartiality to be
25 questioned; and (2) that transcript review pursuant to
FRCP 30(e) was not requested.

IN WITNESS WHEREOF, I have set my hand in my
office in the County of Clark, State of Nevada, this 2nd
day of March, 2025.

Blanca I. Cano

Blanca I. Cano, CCR No. 861, RPR

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

Page 1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 LATIA ALEXANDER,)
individually as heir of)
5 ISAIAH T. WILLIAMS and in)
her capacity as Special)
6 Administrator of the Estate) CASE NO.:
of ISAIAH T. WILLIAMS,) 2:24-CV-00074-APG-NJK
7)
Plaintiff,)
8)
vs.)
9)

10 LAS VEGAS METROPOLITAN)
POLICE DEPARTMENT, a)
political subdivision of the)
11 State of Nevada; KERRY)
KUBLA, in his individual)
12 capacity; BRICE CLEMENTS, in)
his individual capacity;)
13 ALEX GONAZALES, in his)
individual capacity; RUSSELL)
14 BACKMAN, in his individual)
capacity; JAMES ROTHENBURG,)
15 in his individual capacity;)
JAMES BERTUCCINI, in his)
16 individual capacity; MELANIE)
O'DANIEL, in her individual)
17 capacity; DOES I-XX,)
inclusive,)
18)
Defendants.)
19)

20 VIDEOCONFERENCE DEPOSITION OF SPENCER FOMBY
21

22 Taken on Tuesday, February 18, 2025

23 At 10:03 a.m.

24 Reported by: Blanca I. Cano, CCR No. 861, RPR
25 Job No.: 59779, Firm No.: 116F

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>1 APPEARANCES: 2 For the Plaintiff: 3 BREEDEN MALPRACTICE & INJURY LAW 4 BY: ADAM J. BREEDEN, ESQ. 5 7432 West Sahara Avenue 6 Suite 101 7 Las Vegas, Nevada 89117 8 (702) 819-7770 9 10 For the Defendants: 11 MARQUIS AURBACH CHTD. 12 BY: ANDREW D. YATES, ESQ. 13 10001 Park Run Drive 14 Las Vegas, Nevada 89145 15 (702) 382-0711 16 17 I N D E X 18 WITNESS: SPENCER FOMBY 19 EXAMINATION 20 BY MR. BREEDEN 21 22 E X H I B I T S 23 24 NUMBER 25 (No exhibits were marked.) * * * * *</p> <p>PAGE 3</p> <p>MARKED</p>	<p>2 4 1 and the Las Vegas Metropolitan Police Department over a 2 police fatal shooting involving her son, Isaiah 3 Williams, which occurred on January 10th of 2022. 4 Do you understand the reason why you are here 5 today is to give deposition testimony about your expert 6 opinions in that case? 7 A. Yes, sir. 8 Q. Let me ask you, Mr. Fomby, you're a black man; 9 correct? 10 A. Yes, sir. 11 Q. Do you think there are problems between law 12 enforcement and black men? 13 A. Well, that's kind of a general statement and 14 obviously something I wasn't asked to opine on. It's 15 not the subject of my opinion. 16 Q. Do you think there's problems with some law 17 enforcement agencies overenforcing or using overly 18 aggressive tactics in black neighborhoods? 19 A. It's been the subject of debate, but, again, 20 it's not part of my opinion in this case. 21 Q. All right. I notice that you have given 22 deposition testimony a number of times, but I'm going to 23 go through the ground rules for today's deposition with 24 you. 25 Understand that the oath that was administered</p>
<p>3 1 LAS VEGAS, NEVADA; TUESDAY, FEBRUARY 18, 2025; 2 10:03 A.M. 3 -oOo- 4 5 (Prior to the commencement of the 6 deposition, all of the parties present 7 agreed to waive the court reporter 8 requirements under Rules 30(b)(5)(A) and 9 30(b)(5)(C) of the NRCP/FRCP.) 10 11 Thereupon, 12 SPENCER FOMBY, 13 was called as a witness, and having been first duly 14 sworn, was examined and testified as follows: 15 16 EXAMINATION 17 BY MR. BREEDEN: 18 Q. Good morning, sir. Can you please state your 19 name for the court reporter and go ahead and spell your 20 name as well. 21 A. Good morning. It's Spencer Fomby, 22 S-p-e-n-c-e-r, F, as in Frank, o-m, as in Mary, b-y. 23 Q. Okay. Mr. Fomby, my name is Adam Breedon. I'm 24 the attorney for a woman, Latia Alexander, who has 25 filed a lawsuit against several law enforcement officers</p>	<p>5 1 to you by the court reporter here is the same oath that 2 you would take as if you were in a court of law in front 3 of a judge and a jury, and it obligates you to tell the 4 truth under penalty of perjury. 5 Do you understand that? 6 A. Yes, sir. 7 Q. The court reporter's taking down everything 8 that's said today -- all of my questions and your 9 answers and any other comments or objections -- and 10 afterwards she's going to put everything into a booklet 11 or a transcript form, and you'll have the opportunity to 12 review that and make changes to your testimony, if you 13 wish to do so. 14 I just caution you in advance that if you 15 choose to make a change to your testimony after today, I 16 would have the right to comment on the fact that you 17 said one thing during your deposition and then later you 18 tried to change it, if the change was something in a 19 meaningful way. 20 Do you understand that? 21 A. Yes, sir. 22 Q. It is important for us to get a good record 23 today, so there are several things I will ask you to do 24 for me. 25 If you don't understand any of my questions,</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>6</p> <p>1 please ask me to repeat or rephrase them. I'll be happy 2 to do so. During today's deposition, I need you to give 3 an audible answer such as a "yes" or a "no." Please 4 don't merely shake your head up and down or side to side 5 if you mean "yes" or "no" or use slang terms such as 6 "uh-huh" or "uh-uh" if you mean "yes" or "no." If you 7 do any of that, I'll probably just politely ask you if 8 you meant "yes" or "no" or some other response so that 9 we have a good record today.</p> <p>10 Additionally, you've done an excellent job so 11 far, but as a general rule during a deposition, we need 12 to all make sure that we are not speaking at the same 13 time as anyone else because it's very difficult for the 14 court reporter to accurately take down what two people 15 are saying at the same time, especially in a Zoom 16 setting like we have today here if we start talking over 17 one another.</p> <p>18 So can you do all of that for me?</p> <p>19 A. Yes, sir.</p> <p>20 Q. During today's deposition, one of the other 21 attorneys may make an objection to my question. I want 22 to explain to you how objections work during a 23 deposition process if you're unfamiliar.</p> <p>24 Obviously, we do not have a judge here on the 25 videoconference to immediately rule on objections, so</p>	<p>8</p> <p>1 expert, a very long list of documents that you reviewed 2 was disclosed.</p> <p>3 Have you reviewed anything else since you 4 prepared your reports in this case?</p> <p>5 A. Yes, sir. I saw Mr. Gilbertson's deposition 6 transcript, so I have reviewed that.</p> <p>7 Q. There's also been some other witness 8 depositions taken since your reports were prepared.</p> <p>9 Have you reviewed those?</p> <p>10 A. I believe I've reviewed a few. I can't 11 remember the officer -- or the officer's name -- was the 12 lead investigator. I saw his deposition testimony also.</p> <p>13 Q. Would that be Officer Findley?</p> <p>14 A. No. Officer Findley was the team leader for 15 the SWAT team. Is it Roach or --</p> <p>16 Q. Roth.</p> <p>17 A. Roth, yeah.</p> <p>18 Q. Yeah. Detective Roth, who was the lead CIRT 19 investigator, that's who you're referring to?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. Have you ever met or spoken to any of 22 the defendants or the witnesses that have been deposed?</p> <p>23 A. I know a couple of the officers that were 24 involved in the incident.</p> <p>25 Q. You know them personally?</p>
<p>7</p> <p>1 what we do during a deposition is if I ask a question 2 and the other attorney wishes to state an objection for 3 the record, they may do so, and then we simply wait for 4 you to give your response as if there had been no 5 objection. Then later if a judge needs to review my 6 question and your answer and whether it is admissible in 7 court, the judge can do so at a later time.</p> <p>8 I explain this because it confuses many people 9 who are deposed. They hear an objection and they think 10 they're not supposed to respond, but generally the 11 opposite is true.</p> <p>12 Do you understand that?</p> <p>13 A. I understand.</p> <p>14 Q. All right. Have you consumed any alcoholic 15 beverages in the last 24 hours?</p> <p>16 A. No.</p> <p>17 Q. Have you taken any drugs, including 18 prescription medications, in the last 48 hours?</p> <p>19 A. No.</p> <p>20 Q. Do you have any sort of medical condition -- an 21 extreme example would be like dementia or Alzheimer's 22 disease -- that may affect your memory or ability to 23 testify here today?</p> <p>24 A. No.</p> <p>25 Q. Now, I know because you've been disclosed as an</p>	<p>9</p> <p>1 A. I know them professionally.</p> <p>2 Q. And who do you know?</p> <p>3 A. I have met Bertuccini and Hancock.</p> <p>4 Q. When and how did you meet them?</p> <p>5 A. When I worked in Boise, Idaho, as the director 6 of training for the Boise Police Department and I was 7 also a commander for the SWAT team there, and we had 8 them come there as a private contractor to do training 9 for the SWAT team.</p> <p>10 Q. Okay. So at least those two officers, 11 Bertuccini and Hancock, you trained them previously?</p> <p>12 A. No. We hired them to train our SWAT team.</p> <p>13 Q. I see.</p> <p>14 So they trained you and your SWAT team?</p> <p>15 A. I was a commander, so I wasn't involved in 16 receiving training. I was -- I basically wrote the 17 checks to have people come train our team.</p> <p>18 Q. Okay. But you did get to meet them and you had 19 met them before the incident in this case?</p> <p>20 A. Yes. I believe that was several months before 21 this incident.</p> <p>22 Q. Okay. How many times did you personally see 23 them before the incident?</p> <p>24 A. I think I saw them about two different days.</p> <p>25 So the day they arrived and briefed the team, I met them</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>10</p> <p>1 and welcomed them and then listened to them introduce 2 themselves to the students who are all members of our 3 SWAT team. 4 And then I think on a separate day, I came out 5 during training -- I was pretty busy, but I came out to 6 watch the training and see what they were doing. 7 Q. Okay. And did you have discussions with both 8 of them? 9 A. No. 10 Q. Just observation? 11 A. Yes, sir. 12 Q. Okay. Let me ask you, you've been retained in 13 this case to give opinions, at least as I would phrase 14 it, on police standards and SWAT standards. 15 Do you think that's fair? 16 A. Yes, sir. 17 Q. What sort of sources or treatises or 18 organizations are out there that you would consider to 19 be reliable in that field? 20 A. I guess the main one would be the National 21 Tactical Officers Association, or the NTOA, which is a 22 trade organization, a nonprofit that works to create 23 national standards for all types of tactical operations. 24 So that would be everything from SWAT team response to 25 active shooter response and even response to protests.</p>	<p>12</p> <p>1 Does Nevada? 2 A. I'm not sure that Nevada has one. I believe 3 I've seen members of Nevada SWAT teams attend CATO and 4 other state organization conferences. 5 Q. So Nevada does have something called the State 6 of Nevada Commission on Peace Officer Standards and 7 Training. 8 Would you consider that to be a reliable 9 resource? 10 A. Yes. Most states have a similar organization, 11 what we call POST organizations. And so in California 12 we had California POST, Idaho had Idaho POST. So, yes, 13 that is an organization that looks to create minimal 14 standards for what is considered a peace officer and 15 then establishes baselines for police academies and then 16 ongoing training throughout a peace officer's career. 17 Q. And so if a state POST has issued some sort of 18 reference materials or standards, is that legally 19 binding on departments or is that aspirational? 20 A. Maybe binding in the state, but as it applies 21 to a best practice, a generally accepted policing 22 practice, and then especially in civil court, it may not 23 be relevant. 24 Q. Do you have any legal training, like a 25 paralegal, lawyer, anything like that?</p>
<p>11</p> <p>1 It's -- I've been an instructor with them for 2 about seven years teaching high-risk patrol tactics and 3 help develop certain courses. And I'm currently the 4 lead for the public order section for the NTOA, which 5 means I work with experts in protest response from 6 around the world and create national standards for the 7 response to protests. 8 And then in any state you typically will find a 9 state organization that is kind of equivalent. So in 10 California, we have the California Association of 11 Tactical Officers, or CATO. So many states have similar 12 organizations that work to professionalize SWAT 13 response. 14 Q. And, like, the NTOA, is that something that 15 individual officers join or is that something that 16 police departments join? 17 A. Individual officers can join and teams can also 18 join. There's a team membership. 19 Q. And specifically for Las Vegas Metro Police 20 Department, do you know that department or any of their 21 officers to be a member of NTOA? 22 A. I don't know specifically their membership 23 status. 24 Q. And you said that some states have their own 25 similar organizations.</p>	<p>13</p> <p>1 A. No, sir. 2 Q. Have you ever attended classes at law school? 3 A. No, sir. 4 Q. Have you ever attended legal classes not 5 offered through a law school? 6 A. Not a legal class, no, sir. 7 Q. Okay. You were retained in this case by the 8 law office of Marquis Aurbach; correct? 9 A. Yes, sir. 10 Q. And when you were retained by that law firm, 11 you knew that that law firm represented the defendant 12 officers and the Las Vegas Metropolitan Police 13 Department; correct? 14 A. Yes, sir. 15 Q. So it's not as if you were handed an assignment 16 blind and you didn't know who was retaining you. You 17 knew that in advance; right? 18 A. That's correct. 19 Q. How much did you charge for your document 20 review and preparation of your reports? I guess in 21 terms of what your hourly is but also in, like, the 22 total number of hours or total number of dollars. 23 A. I charge \$350 an hour for all of that process, 24 and then I believe I billed about 70 hours' worth of 25 work for two reports.</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>14</p> <p>1 Q. And so I guess I can do the quick math, but do</p> <p>2 you know in terms of total number of dollars how much it</p> <p>3 is?</p> <p>4 A. Over \$20,000.</p> <p>5 Q. I'm just going to put it into a calculator here</p> <p>6 so we have it.</p> <p>7 So if you've billed approximately 70 hours at</p> <p>8 \$250 an hour, that's going to be 17,500, and you think</p> <p>9 that's probably the minimum you've billed; correct?</p> <p>10 A. To correct the record, it's \$350 per hour.</p> <p>11 Q. Oh, I'm sorry. I misunderstood you.</p> <p>12 Okay. So at that point, it would be a little</p> <p>13 over 20,000?</p> <p>14 A. Yes, sir.</p> <p>15 Q. All right. And then is there anything other</p> <p>16 than this deposition that you've been asked to do or</p> <p>17 review in the future? In other words, are you preparing</p> <p>18 an additional report at the moment?</p> <p>19 A. No, not that I know of, unless there is some</p> <p>20 additional expert from the plaintiff's side that I'm</p> <p>21 asked to review and potentially rebut.</p> <p>22 Q. How much do you charge for appearance at trial?</p> <p>23 Many experts will charge a flat fee for the day or the</p> <p>24 half day.</p> <p>25 What do you charge?</p>	<p>16</p> <p>1 A. A Tier 1 SWAT team essentially means that you</p> <p>2 have a certain number of members. I can't recall the</p> <p>3 exact number off the top of my head, but NTOA</p> <p>4 established these standards to give guidelines on</p> <p>5 different types of teams based on their capabilities.</p> <p>6 So a Tier 1 would be the most capable team, and</p> <p>7 that team has a certain number of people -- you know, I</p> <p>8 think it's in the range of 20 people -- and then they</p> <p>9 have certain capabilities. So the capability to respond</p> <p>10 to a hostage rescue is the most important thing and then</p> <p>11 certain equipment. So they have armored vehicles, they</p> <p>12 have night vision equipment, and they have the</p> <p>13 capability to use explosive breaching.</p> <p>14 Q. Now, most of your law enforcement experience on</p> <p>15 SWAT comes from the Berkeley California Police</p> <p>16 Department; is that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And their SWAT team is not a Tier 1 team, is</p> <p>19 it?</p> <p>20 A. That's correct. The Tier 1 -- the difference</p> <p>21 between my team, which at the time was a Tier 2, and a</p> <p>22 Tier 1 team was -- at the time we did not have explosive</p> <p>23 breaching and we did not have night vision goggles. And</p> <p>24 so the team currently has night vision and I believe</p> <p>25 they're working toward the explosive breaching program.</p>
<p>15</p> <p>1 A. \$3,500 a day on a day that I testify.</p> <p>2 Q. I was looking at your CV before today's</p> <p>3 deposition, and educationwise you have a bachelor of</p> <p>4 arts in justice administration from Howard University;</p> <p>5 correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And is that your highest degree of education</p> <p>8 achieved?</p> <p>9 A. Yes, sir.</p> <p>10 Q. You do not hold a master's degree in criminal</p> <p>11 justice or any other field for that matter; right?</p> <p>12 A. That's correct.</p> <p>13 Q. And you have never been a tenured professor on</p> <p>14 issues of criminal justice; correct?</p> <p>15 A. No. Just a visiting fellow on police science</p> <p>16 at the University of -- we say Derby, they say Derby --</p> <p>17 in the UK. And so I've traveled there for about three</p> <p>18 different -- three years to give guest lectures on</p> <p>19 policing practices, but I was not a professor.</p> <p>20 Q. Okay. Would you agree with me that at the time</p> <p>21 this happened in 2022, Las Vegas Metro Police Department</p> <p>22 was considered a Tier 1 SWAT team?</p> <p>23 A. Based on the NTOA standards, yes.</p> <p>24 Q. Yeah. And so based on those standards, what</p> <p>25 does it mean to have a Tier 1 SWAT team?</p>	<p>17</p> <p>1 But those were the two gaps in our capabilities that I</p> <p>2 was working to improve, but that was the difference</p> <p>3 between those two tiers.</p> <p>4 Q. Now, when you were on SWAT at the Berkeley</p> <p>5 Police Department, were you assigned full time to SWAT</p> <p>6 or did you have nonSWAT duties as well?</p> <p>7 A. In the United States, there's only a handful of</p> <p>8 teams that are full-time SWAT teams, and so my team</p> <p>9 fell into the part-time or ancillary duty category. So</p> <p>10 all of us were police officers who had regular jobs as</p> <p>11 detectives or patrol or narcotics, and then we trained</p> <p>12 twice a month and we responded when called out to</p> <p>13 emergencies as a SWAT team.</p> <p>14 Q. And so that was different for Berkeley, your</p> <p>15 SWAT duties were part time versus in Las Vegas there's a</p> <p>16 full-time unit; right?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. So have you ever had a lawsuit filed</p> <p>19 against you relating to your job as law enforcement?</p> <p>20 A. Yes, sir.</p> <p>21 Q. How many?</p> <p>22 A. I believe two.</p> <p>23 Q. Why don't you just tell me about the first one</p> <p>24 chronologically.</p> <p>25 When was that filed?</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>18</p> <p>1 A. I don't know the dates. I know there is a case 2 maybe -- I don't know. I'm just guessing -- 2014 to 3 2016. It's Decaprio versus the City of Berkeley, and 4 that case involves a squatter. 5 So there was a group of people who were looking 6 to take over abandoned properties in the Bay Area 7 through adverse possession, and my job was -- I was 8 working as a crime prevention officer, and so I was 9 alerted to this group of people breaking into an 10 abandoned house and eventually coordinated with the 11 patrol officers to remove them multiple times over the 12 course of a year. 13 Arrested him, Mr. Decaprio, for trespass, and 14 then I worked with the City manager's office and the 15 prosecutor to charge him with trespass, and then 16 eventually went to trial, he was convicted, and then he 17 filed a lawsuit against the City and named me as a 18 defendant. 19 Q. And what was the resolution of that lawsuit? 20 A. The case was dismissed. 21 Q. Did he allege that you or the City had violated 22 his civil rights? 23 A. He alleged that, yes. 24 Q. Okay. What civil rights did he allege you had 25 violated?</p>	<p>20</p> <p>1 excessive force during a protest? 2 A. I was one of the leaders and planners, so I 3 believe the allegation against me was that I was 4 involved in planning an operation that led to First 5 Amendment violations. 6 Q. Okay. And what was the resolution of that 7 lawsuit? 8 A. My understanding is that case was also 9 dismissed. 10 Q. And it was not settled, it was dismissed 11 involuntarily? 12 A. That's correct. 13 Q. Okay. Have you had any use of force complaints 14 against you in your career, even if a lawsuit wasn't 15 filed? 16 A. No. 17 Q. How many internal affairs investigations of you 18 are you aware of during your law enforcement career? 19 A. I don't know. I know the only -- I have one 20 sustained complaint in my career and that was for using 21 profanity during an incident, and that's it. I don't 22 know of -- I can't recall any other allegations. And 23 that is the only sustained complaint that I ever had. 24 Q. In your time on SWAT units during your law 25 enforcement career, did you ever use CET entries?</p>
<p>19</p> <p>1 A. Well, he alleged that we deprived him of his 2 property rights because he had paid the property taxes 3 and we removed him physically, arrested him for 4 trespass, and he alleged that we violated his civil 5 rights by removing him from a property that he 6 rightfully owned. 7 Q. And you say that the case was dismissed, but 8 was it dismissed involuntarily by the Court or was it 9 dismissed because some sort of settlement or other 10 resolution was reached? 11 A. Well, I know the City didn't settle with him, 12 and I don't know technically how it was resolved, but I 13 know that he did not win and we did not settle. 14 Q. Okay. And the second occasion that you're 15 thinking of, when approximately was that? 16 A. I believe it was after 2014. I believe it was 17 a protest case, and I don't recall the specifics. But I 18 was named as an individual defendant in a case where 19 people sued the City of Berkeley for our response to a 20 protest. 21 Q. And was that filed in United States District 22 Court? 23 A. I don't know for sure. I believe it was a 1983 24 action, but I don't know for sure. 25 Q. Okay. And so it was alleged that you used</p>	<p>21</p> <p>1 A. That's exclusively for most of my career. 2 Q. So you say you exclusively used CET entries 3 during your career? 4 A. Almost exclusively until the later part of my 5 career. CET, or what we call dynamic entry, was our 6 bread and butter kind of baseline tactic for high-risk 7 search warrants. 8 Q. I was looking over your -- I'm going to share 9 it here on the screen so that we can look at the same 10 thing. 11 So I was provided -- I think this is on your 12 screen. 13 Can you see it? 14 A. I can see it. 15 Q. Yeah. So this is your testimony and deposition 16 list that my office was provided. It looks like you've 17 listed 11 prior times that you've given deposition or 18 trial testimony. The last looks like it was in June of 19 2024. 20 Have you given any other testimony or testified 21 at trial since then? 22 A. I have given a deposition on January 24th, I 23 believe, in a case. It's a District of Columbia DC 24 Metro case. 25 Q. Okay. And so when we look at this list of</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>22</p> <p>1 trial and deposition testimony that you've given, did 2 you represent the law -- or were you retained on behalf 3 of the law enforcement agency in each one of these? 4 A. So No. 6, I was actually retained by the 5 hospital, who they were suing, Ammon Bundy, the militia 6 leader, so I testified on behalf of the hospital. 7 And then Erma Johnson, that case I testified 8 for the plaintiff, alleging that an Arizona DPS trooper 9 used excessive force when he shot an unarmed motorist. 10 And then the Mayor and City Council of 11 Baltimore versus Purdue Pharma, I represented CVS. So 12 the City of Baltimore sued CVS alleging that CVS 13 contributed to the opioid crisis by allowing diverted 14 prescription opioids to flood the drug market in 15 Baltimore. And so I evaluated Baltimore PD and I gave 16 an opinion that their actions were inconsistent with 17 generally accepted policing practices. 18 And the other two cases are defense cases also. 19 Q. Okay. So of this list of 11, there's one, and 20 that's the Johnson case, that you believe you 21 represented plaintiff or the person filing the case? 22 A. Yes, that's correct. 23 And then, you know, No. 6 is also a plaintiff's 24 case, not a police case. 25 Q. Okay. Understood. But that doesn't -- that</p>	<p>24</p> <p>1 A. This is the first case. 2 Q. In terms of what you do in your life right now 3 for income, is it solely litigation expert reviews or do 4 you do other work? 5 A. I also work with the National Tactical Officers 6 Association, the NTOA, so running the public order 7 section and teaching best practices around the country 8 is one source of income. 9 I do consulting work and expert litigation, so 10 I also consult -- I am currently retained by the City of 11 Akron to review their protest policy. And I've been 12 asked by -- I've been recently asked by the City of 13 Hartford to act as a consultant on an internal affairs 14 investigation. So I reviewed the actions of the officer 15 and wrote a report on a case where it looks like the 16 officer is likely to be charged criminally. 17 So some of the work is civil litigation, some 18 of it is criminal. Some of it is internal affairs and 19 some of it is consulting. 20 Q. Let's say in the last two years, what 21 percentage of your income has come from litigation 22 consulting versus other sources? 23 A. Probably 60 percent. 24 Q. So at this point most of what you do in your 25 career is serving as a litigation expert on police</p>
<p>23</p> <p>1 doesn't concern -- well, did that concern law 2 enforcement standards? 3 A. It did, but it was not a suit against the 4 police. 5 Q. Okay. 6 A. And just to clarify the record, that is my 7 deposition and trial testimony. I'm currently retained 8 in 14 different plaintiffs cases that are police use of 9 force cases, and then I also work on cases with the King 10 County inquest process. So in King County, Washington, 11 any time there's an in-custody death or an 12 officer-involved shooting, the coroner calls an inquest. 13 And so I've represented the decedent's family 14 in three different inquests where my opinion was 15 critical of the police. 16 Q. Did you author reports in those cases? 17 A. In a couple of those cases, I authored reports, 18 and then I was also retained by the inquest 19 administrator as a neutral party between the union, the 20 officer, the family, and the administrator and gave an 21 opinion -- testified during the inquest, and my opinion 22 in that case was critical of the police actions. 23 Q. On how many occasions have you been retained by 24 Attorney Craig Anderson or his law firm, Marquis 25 Aurbach?</p>	<p>25</p> <p>1 practices? 2 A. That's correct. 3 Q. Okay. What do you believe your role is as an 4 expert when you're retained in these cases? 5 A. Ultimately my role is to educate the trier of 6 fact, whether the judge or the jury, on generally 7 accepted policing practices and, you know, give opinions 8 that might help them reach the ultimate conclusion. 9 Q. I want to give you an example of something to 10 preface my next question. Imagine if you had a police 11 department and they had a policy that said if an unarmed 12 suspect is fleeing police, that it is acceptable for 13 police to subdue that suspect by shooting them in the 14 back. 15 Now, my question is -- and I think such a 16 policy would be an example of this -- you can have a 17 local policy or a national policy, but ultimately what 18 will decide this case is the constitutional standard of 19 whether excessive force was used. 20 Do you agree with that? 21 A. I would agree. The officers would be trained 22 and the officers should understand Graham versus 23 Connor -- in this case, Tennessee versus Garner -- the 24 reasonable use of deadly force against a violent fleeing 25 felon is established by the Supreme Court, and so the</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>26</p> <p>1 officers and agency should understand that.</p> <p>2 If they had a policy that was not consistent</p> <p>3 with the constitutional standard, that is in their -- up</p> <p>4 to their discretion, but that could still expose them to</p> <p>5 certain liability.</p> <p>6 Q. Yeah. And so, I mean, are you trying -- do you</p> <p>7 intend to testify on the ultimate excessive force</p> <p>8 constitutionality issue in this case or are you limiting</p> <p>9 your opinions in this case to the police standards?</p> <p>10 A. Well, I'm not drawing legal conclusions. What</p> <p>11 I would talk about is the way that officers are trained,</p> <p>12 the generally accepted policing practices for the use of</p> <p>13 force and for the actions of a SWAT team and how a</p> <p>14 reasonable SWAT team would comport themselves with those</p> <p>15 standards.</p> <p>16 Q. And even though this matter resulted in the</p> <p>17 death of a 19-year-old black man who appears to have</p> <p>18 been unrelated to the search warrant and the crime that</p> <p>19 was being investigated and he died, you believe that</p> <p>20 SWAT did a good job here?</p> <p>21 A. It's not about whether they did a good job.</p> <p>22 It's about whether their actions were consistent with</p> <p>23 generally accepted policing practices and whether a</p> <p>24 reasonable SWAT team would have acted the same way under</p> <p>25 similar circumstances.</p>	<p>28</p> <p>1 received a cold call from City of Portland, the Portland</p> <p>2 City Attorney's Office, and they -- I was on duty,</p> <p>3 jumped in my patrol car, and they put me on speaker</p> <p>4 phone with their firm and -- or with the law office --</p> <p>5 City Attorney's Office, I should say. And they said</p> <p>6 they wanted to run a fact pattern past me.</p> <p>7 So they gave me the fact pattern and I gave</p> <p>8 them my opinion, and they said that they wanted to</p> <p>9 retain me as an expert. And I didn't really know what</p> <p>10 that meant. I had not been exposed to the expert</p> <p>11 witness world, so I ended up working with them on that</p> <p>12 case. It was a protest-related case. That was the</p> <p>13 first case that I did.</p> <p>14 And then I worked a couple other cases while I</p> <p>15 was still a full-time police officer, and then really</p> <p>16 started working as a litigation expert when I retired in</p> <p>17 January of 2023.</p> <p>18 Q. In your approximately eight years of litigation</p> <p>19 expert work, are you aware of any time that a court has</p> <p>20 excluded in whole or in part any of your opinions?</p> <p>21 A. No, sir.</p> <p>22 Q. And I want to come back to this question I</p> <p>23 asked you a little earlier.</p> <p>24 We would agree that in this field -- or would</p> <p>25 you agree with me, that there are department standards</p>
<p>27</p> <p>1 Q. And so you think they complied with that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Do you think your role as a litigation expert</p> <p>4 is to advocate?</p> <p>5 A. No, sir.</p> <p>6 Q. What professional licenses or certifications do</p> <p>7 you hold for law enforcement or otherwise?</p> <p>8 A. Well, I've been an instructor, and I can't say</p> <p>9 that all of my instructor certifications are current,</p> <p>10 but I have been a certified instructor for firearms --</p> <p>11 so pistol, shotgun, rifle -- the use of less lethal</p> <p>12 weapons, so everything from pepper spray to tear gas,</p> <p>13 less lethal impact munitions, the use of flash bangs in</p> <p>14 their various forms.</p> <p>15 I have been a certified deescalation instructor</p> <p>16 and written two courses that are certified in the state</p> <p>17 of California. I think those are -- those are the</p> <p>18 general certifications that I have.</p> <p>19 Q. Have you ever tested for a professional license</p> <p>20 or accreditation and it's been denied?</p> <p>21 A. No, sir.</p> <p>22 Q. When did you first start doing litigation</p> <p>23 expert consulting work?</p> <p>24 A. My first case was in 2017 when I was working in</p> <p>25 Berkeley. I was working as a patrol sergeant, and I</p>	<p>29</p> <p>1 for police departments that the local departments</p> <p>2 (indiscernible), there are national standards that</p> <p>3 national organizations may put out, and then there are</p> <p>4 constitutional standards that courts put out.</p> <p>5 Do you agree with that?</p> <p>6 A. I would agree.</p> <p>7 Q. And you agree with me that sometimes there can</p> <p>8 be conflicts? In other words, a local department</p> <p>9 standard may not comport with the constitutional</p> <p>10 standard; right?</p> <p>11 A. That's correct.</p> <p>12 Q. That's what lawsuits are made of; right?</p> <p>13 A. I see it pretty often, yes.</p> <p>14 Q. Yeah.</p> <p>15 This lawsuit involves something that's called</p> <p>16 knock and announce.</p> <p>17 What are -- what is your understanding of knock</p> <p>18 and announce requirements?</p> <p>19 A. So knock and announce refers to a requirement</p> <p>20 that under the Fourth Amendment that officers, when they</p> <p>21 are attempting to make entry into a private residence,</p> <p>22 will notify the occupants who they are, their intent,</p> <p>23 and then demand entry.</p> <p>24 And so there's lots of different case law that</p> <p>25 guides the actions of police agencies on how to comport</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>30</p> <p>1 with the constitutional requirements. But I think one 2 of the biggest misunderstandings is how that knock and 3 announce is actually executed and what the requirements 4 are.</p> <p>5 Q. And so what reliable sources have you seen 6 about how to properly execute knock and announce?</p> <p>7 A. Well, actually, you know, most responsible 8 police agencies and police instructors will pay 9 attention to any court rulings, so there's different 10 places where you can find information on what the courts 11 in your circuit have ruled or any Supreme Court 12 decisions on knock and announce.</p> <p>13 And then organizations like the NTOA and even 14 state POST organizations can put out guidance on 15 compliance with knock and announce.</p> <p>16 Q. Now, would you agree with me that police 17 departments need to reasonably train SWAT officers on 18 relevant case law from courts in their circuit about 19 knock and announce?</p> <p>20 A. I would expect that, yes, sir.</p> <p>21 Q. Okay. Now, your experience as a law 22 enforcement officer, you were in California, and that's 23 the Ninth Circuit Court of Appeals; right?</p> <p>24 A. That's correct. Idaho and California are in 25 the ninth circuit.</p>	<p>32</p> <p>1 the announce; and then we have the passage of a 2 significant amount of time for officers to use force to 3 enter the residence. And then we have kind of an 4 additional factor which is other unusual things that may 5 shorten or lengthen the waiting time.</p> <p>6 Do you agree with all of that?</p> <p>7 A. I generally agree. I don't know if I agree 8 with the term "significant," but I agree with that 9 sequence.</p> <p>10 Q. Well, are you aware that in United States 11 versus Granville, the ninth circuit specifically stated 12 there must be a lapse of, quote, a significant amount of 13 time, end quote, before officers may forcibly enter?</p> <p>14 A. Again, I don't know that case specifically.</p> <p>15 Q. Okay. So are you saying officers shouldn't 16 wait a significant amount of time after knocking and 17 announcing before using force to enter a residence?</p> <p>18 A. What I've always been taught and what I've 19 always instructed and the way that I have led teams in 20 the field is that we would wait a reasonable amount of 21 time based on the totality of circumstances before 22 forcing entry.</p> <p>23 So that term "significant" versus "reasonable," 24 I see a difference there in the interpretation.</p> <p>25 Q. All right. Let's go back and sort of talk</p>
<p>31</p> <p>1 Q. Yeah. And just, I guess, by coincidence, 2 Nevada is in the ninth circuit as well.</p> <p>3 You're aware of that; right?</p> <p>4 A. That's correct.</p> <p>5 Q. Are you familiar with the ninth circuit case of 6 United States versus Granville?</p> <p>7 A. I'm not sure I know that case specifically.</p> <p>8 Q. How about United States versus Mendonsa?</p> <p>9 A. I don't know the case specifically, no.</p> <p>10 Q. Are you aware that the ninth circuit cases, 11 when they talk about knock and announce, they appear to 12 divide it into four parts.</p> <p>13 The first part is the knock itself; right?</p> <p>14 A. Was that a question?</p> <p>15 Q. Yeah.</p> <p>16 A. Well, yes. And the -- I guess one of the 17 issues is what is required or what is considered the 18 knock; right? So the knock can actually be an 19 announcement or an alert, and in this -- you know, in 20 some cases, that knock is actually done at a distance 21 and is not a physical knock on the door.</p> <p>22 Q. All right. Well, we're going to go through 23 them one by one, but I want to sort of establish the 24 elements with you first.</p> <p>25 So, first, we have the knock; second, we have</p>	<p>33</p> <p>1 about each of those requirements individually.</p> <p>2 Regarding knocking, will you agree with me that 3 officers did not physically announce -- I'm sorry, they 4 did not physically knock on the front door of the 5 apartment?</p> <p>6 A. That's correct.</p> <p>7 Q. And they did not physically knock on any 8 window; right?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. Do you agree with me that officers, when 11 they reasonably can do so, should physically knock on 12 the door or window?</p> <p>13 A. Again, it depends on the circumstances. If the 14 officers are -- the purpose is to alert people inside of 15 the structure, inside of the target location that the 16 police are outside with a warrant and demanding entry. 17 So that can be accomplished in many different ways, and 18 the Nevada POST guidelines talk about knocking or 19 announcing in some other way.</p> <p>20 So even in the Nevada POST guidelines, there is 21 an allowance for notification that does not actually 22 require a physical knock at the door.</p> <p>23 Q. Right. But do you believe it's reasonable for 24 officers to physically knock when they can do so?</p> <p>25 A. It is -- it's a typical tactic. It is not a</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>34</p> <p>1 requirement.</p> <p>2 Q. Well, what is Las Vegas Metropolitan Police</p> <p>3 Department's formal, informal, or standing operating</p> <p>4 procedure regarding actually knocking?</p> <p>5 A. Well, there's obviously different ways they've</p> <p>6 gone about that over the years. It seems that they</p> <p>7 knock at times. They also, in this case, used a</p> <p>8 bullhorn, which is, in my opinion, something that</p> <p>9 exceeds generally accepted policing practices. Most</p> <p>10 agencies don't do that.</p> <p>11 So the purpose is to alert people inside of the</p> <p>12 target location that the police are outside with a</p> <p>13 warrant and demanding entry. It seems that they are</p> <p>14 taking certain actions to make sure that that is clear,</p> <p>15 and using a bullhorn is one of those tactics.</p> <p>16 Q. Was there anything in this particular case that</p> <p>17 you believe made it unsafe or unreasonable for officers</p> <p>18 to attempt to physically knock on the door?</p> <p>19 A. Unsafe? I mean, there's -- one can make the</p> <p>20 argument that a person -- one of the officers could have</p> <p>21 walked up and knocked on the door. It's my opinion that</p> <p>22 it did not change -- or change the outcome of the event,</p> <p>23 and it did not keep people inside of the location from</p> <p>24 being alerted to the presence of the police.</p> <p>25 Q. Well, you've planned services of knock and</p>	<p>36</p> <p>1 outcome of this incident.</p> <p>2 Q. All right. So you gave me a little earlier in</p> <p>3 your answer an example of something that's called a</p> <p>4 generalized risk. I mean, we can say on any warrant</p> <p>5 that there's a risk there will be somebody who is a</p> <p>6 danger to officers there. But I'm asking you was there</p> <p>7 some specific risk that officers specifically observed</p> <p>8 at that time that led them to believe it would be unsafe</p> <p>9 for them to knock?</p> <p>10 A. I haven't seen anything in the record that said</p> <p>11 they made that determination as they approached the</p> <p>12 door.</p> <p>13 Q. Yeah, because by all accounts, they approached</p> <p>14 the door, it was dark inside, they had every reason to</p> <p>15 believe people inside were sleeping; right?</p> <p>16 A. There's no way for them to determine the</p> <p>17 condition of the people inside as they approach the</p> <p>18 residence.</p> <p>19 Q. Okay. But they certainly didn't hear or see</p> <p>20 anybody moving inside; right?</p> <p>21 A. I didn't see any evidence that they knew or</p> <p>22 believed people were moving around.</p> <p>23 Q. All right. If you were planning execution of</p> <p>24 this search warrant, would you plan for an officer to</p> <p>25 physically knock if reasonably safe?</p>
<p>35</p> <p>1 announce warrants before; right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And when you planned them, did you plan them so</p> <p>4 that one of the officers would physically knock on the</p> <p>5 door?</p> <p>6 A. Depending on circumstances. Sometimes I had a</p> <p>7 person knock on the door and announce. Sometimes I had</p> <p>8 a person knock on the window and announce. There are</p> <p>9 other times where we stayed behind cover and announced</p> <p>10 from a distance, and there were times that we used other</p> <p>11 technology to announce our presence. It just depends on</p> <p>12 the circumstance.</p> <p>13 Q. Would you agree with me that under the specific</p> <p>14 circumstances of this case, officers approached the</p> <p>15 door, there was no physical impediment, and there did</p> <p>16 not appear to be anybody who was immediately aware of</p> <p>17 their presence that might be a danger to them?</p> <p>18 A. Well, there's a reason they were carrying</p> <p>19 ballistic shields as they approached the window and the</p> <p>20 front door because they were concerned about potentially</p> <p>21 being shot at. So I can't say that it was, you know --</p> <p>22 they felt safe when they approached the door.</p> <p>23 The determination of whether they physically</p> <p>24 knocked or not, I don't know if they intended to knock,</p> <p>25 but it, in my opinion, doesn't make a difference in the</p>	<p>37</p> <p>1 A. Again, I don't think that the knock is the</p> <p>2 biggest issue. The biggest issue is whether they</p> <p>3 announced their presence, that they had a warrant and</p> <p>4 demanded entry. So there's different ways to do that.</p> <p>5 One way is to knock on the door and have a</p> <p>6 person yell without amplified sound. Another way is to</p> <p>7 have the person with a bullhorn using amplified sound</p> <p>8 stand back and announce their presence, their purpose,</p> <p>9 and demand entry. It's the same thing. The knock to me</p> <p>10 is inconsequential.</p> <p>11 Q. So let's move on to the announce requirement,</p> <p>12 then.</p> <p>13 The -- the residence was an apartment in an</p> <p>14 apartment complex; right?</p> <p>15 A. Yes.</p> <p>16 Q. Do you think the standard when announcing when</p> <p>17 you're in an apartment complex is to announce the unit</p> <p>18 or apartment number that you're referring to?</p> <p>19 A. That's correct.</p> <p>20 Q. All right. Now, in this case, there were two</p> <p>21 main announcements. The first was made by Sergeant</p> <p>22 Backman.</p> <p>23 Do you agree?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And do you agree with me that when Sergeant</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">38</p> <p>1 Backman made the first announcement, he failed to give 2 the apartment or unit number? 3 A. That's correct. 4 Q. Okay. So you would agree with me that that is 5 below standard for an announce on an apartment; is that 6 right? 7 A. He could have done a better job on the first 8 announcement, yes, sir. 9 Q. And he does state the apartment number on the 10 second announcement. 11 Now, let me ask you. The next requirement is 12 the waiting period. Do you believe the waiting period 13 should be measured from the beginning of the 14 announcement or the end of the announcement? 15 A. It always starts at the first announcement. So 16 as soon as the officers start to announce their 17 presence, that is when the time starts because that is 18 when there is a potential compromise of the team, that 19 is when the potential threat from anybody inside begins, 20 as soon as you announce your presence. 21 Q. Are you relying on any court decision for that 22 answer? 23 A. No. I don't know that there's a specific court 24 decision that talks about when you start the time, but 25 that is the generally accepted policing practice in the</p>	<p style="text-align: right;">40</p> <p>1 was consistent with SWAT principles in the United 2 States. 3 Q. So the wait requirement, do you agree that that 4 requires the officers to perform the announce and then 5 wait a significant amount of time so that persons inside 6 can come to the door, ascertain that it actually is 7 police officers with a valid warrant, and provide them 8 admittance? Do you agree with that statement of the 9 law? 10 A. So there's case law that spells the requirement 11 in that way, but then you also have to consider the 12 totality of the circumstances. 13 So if some IRS agents are going to arrest 14 somebody for tax evasion on a white collar crime, and 15 they go to a really nice suburb in a gated community and 16 they walk up with windbreakers on, they may handle the 17 knock and notice in that way. 18 If you are going into an apartment complex with 19 a bunch of gang activity and armed gangbangers who are 20 wanted for murder and it is a nonpermissive environment, 21 then your time to wait is going to be different. 22 Q. Well, what bothers me about the way that you 23 phrased that is that it implies that people who live in 24 affluent or nice neighborhoods have more constitutional 25 rights than people who might have to live in</p>
<p style="text-align: right;">39</p> <p>1 United States. 2 Q. Are you relying, then -- if you can't come up 3 with a court decision, are you relying on any particular 4 written standard, like, from a POST organization or some 5 other organization of that nature? 6 A. No. I mean, it would make no sense for the 7 officers to knock and announce and then start the clock 8 on what is reasonable. The decision on what is 9 reasonable begins at the time that the officers are 10 making announcements, compromising their position, the 11 fact that they are outside, and then determining when it 12 is reasonable to force entry into the unit. 13 Q. When this case -- since Sergeant Backman did 14 not properly announce the apartment number in the first 15 announcement, do you think the waiting period should 16 start from the first announcement or the second 17 announcement which got the apartment number in it? 18 A. I mean, with 20/20 hindsight and, you know, 19 sitting back and reviewing things after the fact, it's 20 easy to make these assessments. The real question is: 21 What did the officers do at the time and was that 22 reasonable and consistent with generally accepted 23 policing practices? 24 It's my opinion that the way they conducted 25 that knock and announce and then the breaching operation</p>	<p style="text-align: right;">41</p> <p>1 crime-ridden or dangerous neighborhoods. 2 Don't we all have the same constitutional 3 rights? 4 A. I'm not talking about socioeconomic background. 5 I'm talking about the level of risk. 6 Q. You've reviewed the officer body-worn camera 7 videos in this matter; right? 8 A. Yes, sir. 9 Q. And so there's sort of differences of opinion 10 as to how long officers waited between the announcement 11 and their first use of force to enter the apartment. 12 Do you agree that the first use of force was 13 breaking out the back window? 14 A. Well, I saw that discussion in Mr. Gilbertson's 15 deposition, and I don't necessarily agree with the 16 use -- the term "use of force" to describe a method of 17 entry or a breaching technique. So I know that was part 18 of the discussion in Mr. Gilbertson's deposition, but, 19 no, I would not agree that that is a use of force in the 20 same way that we would discuss a use of force against a 21 person. 22 Q. Yeah. So I am not talking about the force 23 against a person. I'm talking about forcefully entering 24 the apartment. 25 What was the first act of officers you believe</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">42</p> <p>1 was an act to forcefully enter the apartment?</p> <p>2 A. Yeah. The first breaching technique that was</p> <p>3 used was what we would call a break and rake of the</p> <p>4 window in the living room and the insertion of a stun</p> <p>5 stick.</p> <p>6 Q. And then that was very closely followed by use</p> <p>7 of a battering device on the apartment door; right?</p> <p>8 A. That's correct. So when the announcements</p> <p>9 started, I believe there's three to four announcements</p> <p>10 before the breacher started using the ram.</p> <p>11 Q. Now, if the first attempt to forcibly enter the</p> <p>12 apartment was breaking and raking the back window, in</p> <p>13 your analysis of the videos, how many seconds had</p> <p>14 elapsed between the announcement and the breaking of the</p> <p>15 back window?</p> <p>16 A. From the record and from the CIRT report, it</p> <p>17 looks like six seconds.</p> <p>18 Q. Okay. So you're the defense expert, and even</p> <p>19 you admit that waiting time was no more than six</p> <p>20 seconds; right?</p> <p>21 A. From the record, that appears to be the time.</p> <p>22 Q. So you actually agree with the CIRT report's</p> <p>23 analysis on that issue?</p> <p>24 A. Well, it's just a matter of time. So you can</p> <p>25 look at a video and it appears that that insertion of</p>	<p style="text-align: right;">44</p> <p>1 waited six seconds. You're measuring those six seconds</p> <p>2 from the beginning of the announcements, correct, rather</p> <p>3 than the end?</p> <p>4 A. Correct.</p> <p>5 Q. And are you measuring the six seconds from the</p> <p>6 beginning of the first announcement where the apartment</p> <p>7 number wasn't even mentioned?</p> <p>8 A. Yes. That would be the normal practice.</p> <p>9 Q. Have you done an analysis of the time that</p> <p>10 elapsed from the end of the second announcement, which</p> <p>11 is the first announcement where the apartment number was</p> <p>12 given?</p> <p>13 A. No.</p> <p>14 Q. Okay. You would agree with me that would be</p> <p>15 significantly less time than six seconds?</p> <p>16 A. Yes, but it also would not be consistent with</p> <p>17 generally accepted policing practices on how you assess</p> <p>18 the time.</p> <p>19 Q. Well, I'm not sure that your assessment of when</p> <p>20 that time is measured from is accurate. Ultimately a</p> <p>21 Court may have to do that. But you would agree that if</p> <p>22 the measurement is from the end of either the first or</p> <p>23 the second announcement, that the actual amount of time</p> <p>24 would be less than six seconds; right?</p> <p>25 A. Well, unless you can show me some court ruling</p>
<p style="text-align: right;">43</p> <p>1 the stun stick occurred around that time.</p> <p>2 Q. And also you would agree with me that that stun</p> <p>3 stick, as it so happened, was deployed within ten feet</p> <p>4 of where Mr. Williams physically was in the apartment;</p> <p>5 right?</p> <p>6 A. I don't have the exact measurements, but it was</p> <p>7 used in a way -- the way that it's supposed to be, and</p> <p>8 it's inserted through the window to the -- in an angle</p> <p>9 towards the ceiling of that room. And so then, you</p> <p>10 know, based on NTOA standards and manufacturer</p> <p>11 standards, you would want that device to deflagrate</p> <p>12 really no closer than five feet from anybody who's</p> <p>13 inside of that structure.</p> <p>14 Q. You say no closer than five feet, but anybody</p> <p>15 in that room is going to get an enormously loud sound,</p> <p>16 an enormously bright flash, and they're going to feel a</p> <p>17 pressure wave from the detonation of that stun stick;</p> <p>18 right?</p> <p>19 A. They're going to hear a loud boom. There's</p> <p>20 going to be a bright light. The effect of any pressure</p> <p>21 wave is going to depend on the proximity to the device.</p> <p>22 Q. Now, let's go back to this waiting period issue</p> <p>23 here because we're jumping around a little bit, and I</p> <p>24 want to finish that topic.</p> <p>25 So you are saying that it appears that officers</p>	<p style="text-align: right;">45</p> <p>1 or some objective authority, like the NTOA or CATO, that</p> <p>2 says that you're supposed to start the time at the end,</p> <p>3 I'm very confident that my opinion is consistent with</p> <p>4 generally accepted policing practices. Otherwise, a</p> <p>5 SWAT team would move up to the door, make one</p> <p>6 announcement, and then start the time.</p> <p>7 The reason that they continue to make</p> <p>8 announcements is to make sure that the people inside are</p> <p>9 alerted, and so that's what they're doing in this case.</p> <p>10 They're making announcements, continuing to make</p> <p>11 announcements. Other officers who are approaching the</p> <p>12 window are also making announcements, "Police search</p> <p>13 warrant," and they're continuing to do that, and then</p> <p>14 they're counting off until they decide to start the</p> <p>15 breaching operation.</p> <p>16 So you can't penalize them for continuing to</p> <p>17 make announcements and then say, "Well, you shouldn't</p> <p>18 start the time until the last announcement is over."</p> <p>19 Q. In this case, wasn't the testimony from the</p> <p>20 officers that it had been preplanned that regardless of</p> <p>21 what occurred inside of the apartment, at the end of the</p> <p>22 second announcement, they would insert the stun stick in</p> <p>23 the back window?</p> <p>24 A. I'm not sure if that's exactly what they said,</p> <p>25 but I'm sure that they had some sequence. It would be</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">46</p> <p>1 normal to plan a knock and announce and breaching 2 sequence as part of the planning process. There are 3 some things that would change the plan. So if they 4 started announcing and, you know, somebody opened the 5 door before they started using distraction devices, then 6 that may change the plan. 7 But having a sequence of action from knock and 8 announce to breaching and distraction devices is a 9 normal planning process. 10 Q. So you believe it's acceptable that the 11 officers preplanned to use force to enter the apartment 12 at the end of the second announcement regardless of 13 anything else that occurred? That would be within 14 police standards for you? 15 A. Well, again, depending on the totality of the 16 circumstances in this case where they were going after 17 two suspects who were wanted for a murder using a 18 firearm, they were in a nonpermissive environment, they 19 believed the people inside of the unit may be armed, you 20 know, they decided they wanted to use distraction 21 devices. 22 I also think there's a difference between 23 inserting a distraction device and making entry. So 24 inserting a distraction device into a window and having 25 a controlled deflagration of a flash bang is not</p>	<p style="text-align: right;">48</p> <p>1 A. I haven't seen that in the record. 2 Q. Are you aware that in the ninth circuit 3 Grandville case, the ninth circuit itself said that it 4 has never upheld as constitutional any wait time of less 5 than ten seconds? 6 A. Well, in this case, it looks like they made 7 entry at 16 seconds, so that would be consistent with 8 the ninth circuit. 9 Q. Well, now -- now you're making a moving target. 10 We're not talking about physical entry. We're talking 11 about use of force. And that use of force first 12 occurred with the break and rake of the back window at 13 well less than ten seconds; right? 14 A. Well, again, it's based on the totality of the 15 circumstances, and in this situation with the level of 16 threat that the officers were facing, with the potential 17 for violence, and the totality of circumstances, it's my 18 opinion that their actions were consistent with what a 19 SWAT team in the United States would have done in the 20 same or similar circumstances. 21 Q. Okay. So, again, you've described generalized 22 risks, but when we talk about what officers specifically 23 encountered that morning, they encountered an apartment 24 at 5:00 in the morning that had no lights on and they 25 did not see or hear anybody moving inside before they</p>
<p style="text-align: right;">47</p> <p>1 physically entering the structure. 2 Q. But it is forcefully entering the apartment; 3 right? I mean, they inserted a physical object inside 4 of the apartment. 5 A. They inserted a distraction device into the 6 apartment, but the officers were not entering the 7 structure when they did that. 8 So the time of entry is different from the time 9 of using a distraction device. 10 Q. Are you familiar with any court opinions or 11 police standards that recommend a certain minimum number 12 of seconds that officers should wait between the 13 announcements and forcefully entering the residence? 14 A. If you saw my expert report, I refer to several 15 different cases, and I gave an opinion that there is no 16 bright line on the amount of time officers need to wait, 17 and there are differences in opinion in various courts 18 about how much time the officers need to wait, and it's 19 always based on the circumstances. 20 Q. Are you aware of any police standard that 21 officers generally need to wait at least ten seconds? 22 A. No, sir. 23 Q. Are you aware that at one time Las Vegas 24 Metropolitan Police Department actually had such a 25 standard?</p>	<p style="text-align: right;">49</p> <p>1 used force to enter the apartment; right? 2 A. I would agree with that. 3 Q. Okay. Do you agree with me that it's more 4 likely than not that the occupants of the apartment were 5 asleep at 5:00 in the morning? 6 A. I have no idea what they were doing just prior 7 to the operation, and anybody who says they know what 8 they were doing is speculating. 9 Q. Well, are you aware in the press release from 10 Las Vegas Metropolitan Police Department, their public 11 information officer got up there and said, "We served 12 these warrants at this time so that people are asleep 13 and there's less risk"? 14 A. I have not seen that. 15 Q. Okay. I mean, look, just based on your own 16 experience, if I were to call you at 5:00 in the 17 morning, would you more likely than not be asleep than 18 awake? 19 A. With my lifestyle, sure. Now, in my 20 experience, there are people that are up all night. 21 There are people that are just coming in at 4 o'clock in 22 the morning. There is no way for the officers to know 23 exactly the condition of every person inside the 24 structure as they approach. 25 Q. Well, I agree with that. Officers had no</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">50</p> <p>1 specific information as to whether anybody inside was 2 asleep or awake; correct? 3 A. Correct. 4 Q. Now, are you aware that the ninth circuit has 5 held that when warrants are served at times when people 6 are most likely asleep, that is a factor that should 7 elongate the amount of time that officers use before -- 8 officers wait before they use force? 9 A. I understand the general logic, but I also note 10 that the courts have found that it is reasonable for 11 officers to shorten that time based on potential 12 threats, based on intel and information the officers 13 knew as they are approaching that structure. 14 Q. Okay. But, again, you're giving me 15 generalizations that, hey, they were investigating a 16 homicide. We can't set aside all constitutional 17 requirements simply because a homicide is being 18 investigated. 19 Do you agree with that? 20 A. Well, I would disagree with your 21 characterization as generalized. Everything that they 22 considered is specific to this incident. All the intel 23 that they had, everything that they used to develop 24 their tactical plan is specific to this incident. It's 25 not generalized. If that -- using that logic, SWAT</p>	<p style="text-align: right;">52</p> <p>1 wouldn't be the thing that drives decision-making. What 2 drives the decision-making is the information they knew 3 ahead of time: the underlying offense, the 4 associated -- people associated with the target unit, 5 whether weapons are involved, what kinds of weapons. 6 Those are the things that would determine the tactics 7 they use on the operation, not necessarily what they see 8 as they approach. 9 Q. So do you think it comports with general police 10 practices that officers had preplanned to use noise 11 flash diversionary devices? 12 A. It's a normal tactic that is used on high-risk 13 search warrants. So any time you would do a search 14 warrant involving homicide suspects, especially when you 15 believe they had firearms, it's a normal tactic to use 16 flash bangs or noise flash diversionary devices. 17 In this case, they used them the way that they 18 were designed and consistent with national standards by 19 using one exterior 9 banger and then using the other in 20 a controlled manner using a stun stick instead of 21 breaching the door and randomly throwing flash bangs 22 inside. 23 Q. Are you familiar with Nevada Revised Statute 24 Section 179.055? 25 A. I'm not sure.</p>
<p style="text-align: right;">51</p> <p>1 officers would never even have to do an intel workup or 2 do surveillance. They would just use the same exact 3 tactics on every structure. 4 Q. Let me give you an example from the actual 5 court decision. One of the cases, the fact pattern was 6 the officers were approaching the front door. They were 7 getting ready to do the knock and announce, and then 8 just by chance, somebody actually opens the front door, 9 like, to walk outside. They see it's police officers, 10 and then they slam the door and they turn around and 11 they yell, "Police," for other occupants of the 12 apartment or the residents where they were. 13 Now, those are the kind of unique circumstances 14 that have been held to shorten the amount of time. In 15 this case, officers observed nothing of that kind; 16 correct? 17 A. That's correct. 18 Q. Until they actually entered the apartment, 19 officers never observed anybody inside; right? 20 A. That's correct. 21 Q. And officers never observed any weapons? It's 22 not like they looked through a window and they saw a 23 handgun on a kitchen counter or something like that; 24 right? 25 A. That's not how that normally works and that</p>	<p style="text-align: right;">53</p> <p>1 Q. Did you consider that statute in preparing your 2 opinions or your report? 3 A. I'm not sure about that specific statute. 4 Q. Okay. I'm going to share it here on my screen 5 with you. 6 So this is a Nevada-specific statute, and 7 referring here to subsection 1, it specifically says, 8 "The officer may break open any outer or inner door, 9 window of a house or any part of a house or anything 10 therein to execute the warrant if, after notice of 11 authority and purpose, the officer is refused 12 admittance." 13 What specifically did Mr. Williams do to refuse 14 officers admittance that morning? 15 A. Well, again, this is a state statute that may 16 be more restrictive than constitutional standards or 17 national standards. 18 For any SWAT team, if they approach and knock 19 and notice and they don't get any response, and they 20 don't get affirmative response in the sense of 21 somebody's actually coming to the door, somebody's 22 acknowledging their presence, then at a certain point 23 they're going to start the breaching operation. 24 So refusing admittance, you know, I'd like to 25 see how that is clearly defined because that could be</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">54</p> <p>1 seen as a person affirmatively saying that they aren't</p> <p>2 going to open the door or hearing somebody pushing items</p> <p>3 against the door that, you know, gives the officers a</p> <p>4 belief that people are barricading.</p> <p>5 But in my experience and based on all my work</p> <p>6 on the national level, that is not the standard, that</p> <p>7 the officers would stand there and wait for somebody to</p> <p>8 say, "I'm not going to open the door."</p> <p>9 Q. Do you agree with me that Mr. Williams on that</p> <p>10 morning did nothing physically or audibly to tell</p> <p>11 officers he was not going to provide them admittance</p> <p>12 before they began forcefully entering the apartment?</p> <p>13 A. I would agree.</p> <p>14 Q. In other words, he didn't do something like,</p> <p>15 you know, "We're never opening up"? He never made any</p> <p>16 sort of sound like that; right?</p> <p>17 A. That's correct.</p> <p>18 Q. All right. Have you reviewed the Nevada POST</p> <p>19 guidance on how to properly perform the knock and</p> <p>20 announce requirement?</p> <p>21 A. I have.</p> <p>22 Q. I'm going to go ahead and share this on the</p> <p>23 screen here.</p> <p>24 So this has been produced in this case as</p> <p>25 Williams 809. This is page 12. And it talks about the</p>	<p style="text-align: right;">56</p> <p>1 considered reasonable will depend on all the</p> <p>2 circumstances. Approximately one minute would be a safe</p> <p>3 period in most cases, but it can be less, especially if</p> <p>4 peace officers know that someone is inside and awake."</p> <p>5 So, first of all, you agree that officers did</p> <p>6 not wait for anything close to one minute, which is the</p> <p>7 recommended safe period by Nevada POST.</p> <p>8 You agree with that?</p> <p>9 A. No. There was not a minute that passed, but I</p> <p>10 also -- this is general knock and notice requirements</p> <p>11 for all search warrants, not just the most high risk,</p> <p>12 which, you know, in the situation we're talking about is</p> <p>13 one of the most high-risk circumstances that officers</p> <p>14 face.</p> <p>15 So if you are generally talking about, again,</p> <p>16 property crimes and white collar crimes and putting all</p> <p>17 of those in the same category, I don't think that that</p> <p>18 is a reasonable way to look at this because you have to</p> <p>19 consider the most high-risk incidents also.</p> <p>20 Q. So the example here that is actually given in</p> <p>21 the POST training or POST policies is that if officers</p> <p>22 know somebody is inside and awake, but officers didn't</p> <p>23 have that information in Mr. Williams' particular case;</p> <p>24 right?</p> <p>25 A. That's correct.</p>
<p style="text-align: right;">55</p> <p>1 State of Nevada Commission on Peace Officer Standards</p> <p>2 and Training for POST guidance on this issue.</p> <p>3 And it says, you know, when executing a search</p> <p>4 warrant, there's a specific requirement that before</p> <p>5 forcing entry peace officers must be refused admittance.</p> <p>6 Refusal may be based on, one, a verbal statement.</p> <p>7 We agree that there was no verbal statement</p> <p>8 from Mr. Williams; right?</p> <p>9 A. Correct.</p> <p>10 Q. And then, two, individual conduct. We can</p> <p>11 agree that there was no individual conduct on</p> <p>12 Mr. Williams' part, like slamming a door or trying to</p> <p>13 run out the window or trying to flush evidence, nothing</p> <p>14 like that occurred; right?</p> <p>15 A. Or there also could be a lack of conduct, a</p> <p>16 lack of coming to the door could be individual conduct.</p> <p>17 Q. Well, yeah. So I think that you're actually</p> <p>18 referring to the third category here which is the</p> <p>19 passage of a reasonable amount of time. So officers</p> <p>20 knock, a reasonable amount of time expires, and no one</p> <p>21 has come to the door to provide them admittance.</p> <p>22 That's the third category here; right?</p> <p>23 A. Yes, that is correct.</p> <p>24 Q. And this note at the bottom, I'm just going to</p> <p>25 read it. It says, "Note: The amount of time that is</p>	<p style="text-align: right;">57</p> <p>1 Q. Do you remember, did they know whether there</p> <p>2 was anybody inside at all?</p> <p>3 A. Well, I guess the only way they would have</p> <p>4 known that is if they had constant surveillance from the</p> <p>5 night prior and watched people come and go leading up to</p> <p>6 the operation, which is rarely done because it's</p> <p>7 extremely personnel-intensive to do that.</p> <p>8 Q. CIRT ultimately concluded in this case that</p> <p>9 Mr. Williams' constitutional rights had been violated</p> <p>10 because CET entry is simply inconsistent with the knock</p> <p>11 and announce rule.</p> <p>12 Do you agree with that finding?</p> <p>13 MR. YATES: Objection. Form.</p> <p>14 THE WITNESS: No. I don't agree.</p> <p>15 BY MR. BREEDEN:</p> <p>16 Q. Would you agree with me that the purpose of</p> <p>17 knock and announce is so that people can come to the</p> <p>18 door and ascertain that it actually is police there with</p> <p>19 a warrant and comply with the warrant?</p> <p>20 A. That is the general concept of the purpose of</p> <p>21 knock and announce. The thing you have to also consider</p> <p>22 is the circumstances of actually serving high-risk</p> <p>23 search warrants and what people typically do.</p> <p>24 So that's where, you know, in my experience of</p> <p>25 doing, I don't know, over a thousand high-risk search</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>58</p> <p>1 warrants, I can only think of a handful of times where 2 after knock and announce somebody just opened the door. 3 That is a rare occurrence. 4 Q. Well, even if practically speaking it's rare, 5 there's still constitutional requirements; right? 6 A. Correct. And that's why the courts have 7 allowed much less time to pass before making entry based 8 on the totality of circumstances of each case. 9 Q. I want you to assume that Mr. Williams at the 10 time the knock and announce was performed was asleep on 11 the living room couch, which appears to be where 12 officers found them when they finally got entry inside. 13 Do you think six seconds is enough time for 14 Mr. Williams to wake up, ascertain his surroundings, 15 walk to the front door, tell that it's police, that they 16 have a valid warrant, and provide them entry? 17 A. Well, again, you're using the six-second 18 number. I think if you take 16 seconds before they 19 actually made entry, physical entry into the unit, I 20 think any reasonable person who was listening to a 21 bullhorn and multiple people yelling, "Police search 22 warrant," hearing a flash bang, and then hearing a door 23 rammed five times, he had enough time to get up. And 24 even if he didn't decide to go to the door, he had 25 enough time to comply with the officers when they came</p>	<p>60</p> <p>1 that argument throughout this case, but I don't think 2 that he did not have an opportunity to hear police 3 announce their presence, their purpose, and demand entry 4 multiple times before the flash bang. 5 Q. Do you agree with me that the 9 banger that was 6 used can be confused with gunfire by members of the 7 public? 8 A. It gives what we call a loud report, loud 9 bangs, so I'm not going to speculate on what people 10 might consider that. Some people have said they clearly 11 knew that those were flash bangs when we use those in an 12 urban environment, and, you know, I can see where some 13 people might argue that it sounds like gunshots. 14 Q. Are you aware that one of the officers in this 15 case -- I think it might have been Officer Bertuccini or 16 Officer Rothenburg -- is actually on the body-worn 17 camera afterward asking whether the 9 banger, whether it 18 was a 9 banger or whether it was gunshots, that even 19 that officer was confused? 20 A. I don't recall seeing that. I would not be 21 surprised that officers were misperceiving things that 22 were happening in an extremely stressful situation in 23 the immediate aftermath of an officer-involved shooting 24 where two officers were shot and a suspect was killed. 25 So in my experience, officers' perceptions can</p>
<p>59</p> <p>1 in. But that's not the decision that he made. 2 Q. Do you agree with me that a person's ability to 3 perceive sounds and voices might be distorted or 4 lessened by the fact that they are asleep? 5 A. That's something a police practices expert 6 would typically opine on, so... 7 In my experience, the level of noise that was 8 being made by the officers, any person, even if they 9 were asleep, would have been suddenly awakened by that 10 noise. 11 Q. You know what the scientific or medical 12 phenomenon of sleep inertia is? 13 A. No, sir. 14 Q. You're not going to give any opinions in this 15 case that Mr. Williams was not suffering from sleep 16 inertia, are you? 17 A. No, sir. It's outside my scope of expertise. 18 Q. And you say that Mr. Williams had an ability to 19 hear police, but certainly the noise flash diversionary 20 devices, those make very loud noises that might impair 21 someone's ability to hear people outside of the 22 apartment. 23 Would you agree with that? 24 A. Well, the announcements are at least four 25 announcements before the first flash bang. So I've seen</p>	<p>61</p> <p>1 be distorted in the immediate aftermath. 2 Q. Do you think it was reasonable here for the 3 officers to simply automatically deploy the stun stick 4 into the rear window without any further action from 5 Mr. Williams? 6 A. Again, it is based on the intel, based on the 7 level of threat, the circumstances as they approach, you 8 know, based on everything that -- the information that 9 was available to them as they were planning and serving 10 this warrant, I believe that that was reasonable use of 11 a distraction device. 12 Q. Do you think it was an excessive force for the 13 officers to preplan to deploy that stun stick through 14 the back window without knowing who was inside or where 15 they were inside of the apartment? 16 MR. YATES: Objection. Form. 17 THE WITNESS: And just to clarify, you said do 18 I believe it was excessive force? Was that your 19 question? 20 BY MR. BREEDEN: 21 Q. Yes. 22 A. Well, again, if you're going to use it -- if 23 you're going to use the term "excessive force," then, 24 you know, you're looking at it as a Graham analysis, and 25 if you're taking the totality of circumstances, then no,</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">62</p> <p>1 because you look at the severity of the crime, you know, 2 any potential and immediate threat, and people 3 potentially resisting arrest or not complying. 4 So in a situation where you're serving a 5 high-risk search warrant for a murder suspect where you 6 believe the suspects may be armed and that you may deal 7 with an armed and dangerous suspect, as soon as you make 8 contact with them using a less lethal distraction device 9 in those circumstances is not excessive force. 10 Q. Are you familiar with the ninth circuit case of 11 Boyd versus Benton County? 12 A. Yes. It's a case we refer to when evaluating 13 the reasonableness of the use of flash bangs. 14 Q. And the ninth circuit in that case writes, 15 quote, Given the inherently dangerous nature of the 16 flash bang device, it cannot be a reasonable use of 17 force under the Fourth Amendment to throw it blind into 18 a room occupied by innocent bystanders, end quote. 19 You agree that's the standard that the ninth 20 circuit has set forth, correct? 21 A. That's correct. And that's why the NTOA and 22 other credible organizations -- and as a flash bang 23 instructor, we would always train officers to place the 24 bang, meaning watch it, place it in a place where you 25 can visually see the bang and watch it deflagrate. Or</p>	<p style="text-align: right;">64</p> <p>1 seeking to execute a search warrant. 2 Do you agree with that? 3 A. Yes, sir. 4 THE COURT REPORTER: Mr. Breeden, when it's 5 convenient, may I have a break? 6 MR. BREEDEN: Oh, yes. Let me ask this 7 question and then we can take a very short break. But I 8 really think we can finish around noon, I think. 9 BY MR. BREEDEN: 10 Q. So are you aware that Las Vegas SWAT had 11 alternate uniforms, some of which indicated "Police" in 12 bright gold lettering, and then they have uniforms that 13 they actually used for Mr. Williams' case, which I would 14 call blackout uniforms, where the lettering indicating 15 they're police is in black and much more difficult to 16 see from a distance? 17 A. Is your question did I know they had different 18 uniforms? 19 Q. Yes. Did you know that? 20 A. I'm not sure that I knew they had different 21 uniforms. 22 Q. Why if they're executing a warrant where they 23 have to clearly indicate that they're police would they 24 wear uniforms making it harder for people to see and 25 read that?</p>
<p style="text-align: right;">63</p> <p>1 use it on the exterior in a way that Las Vegas Metro PD 2 SWAT used the 9 banger or use a bang pole, as what it's 3 typically called. Vegas Metro calls it a stun stick. 4 But use a pole where you attach the flash bang 5 device to the pole, and then you deflagrate the device 6 in a controlled manner where you are holding it and 7 there's no chance that that device will land on a person 8 or -- or impact a person because you blindly throw it. 9 So in this case, Las Vegas Metropolitan PD SWAT 10 used flash bangs in a way that was consistent with that 11 case law. 12 Q. So you're saying the difference to you, the 13 reason why you don't think that case was violated is 14 because they didn't physically throw the device, they 15 attached it to a stun stick? 16 A. That is literally what that case has led to. 17 All around the country organizations and instructors 18 like myself training SWAT officers to use flash bangs in 19 a way that comports with the Court's ruling, which means 20 do not take the flash bangs and blindly roll them into 21 rooms without seeing where they're going. 22 Q. Now, you would admit for a service of a knock 23 and announce warrant, police are not intended to be 24 hiding their identity. They should be clearly 25 announcing and indicating that they are police officers</p>	<p style="text-align: right;">65</p> <p>1 A. Well, I think the practice and what the courts 2 have found is that, you know, would a reasonable person 3 believe that these were police officers. And so I think 4 if you had officers who were approaching the scene, not 5 clearly identifiable as police, and then conducting a 6 no-knock warrant where they didn't identify themselves, 7 and then they snuck into some person's residence, I can 8 see the argument that how would a reasonable person 9 believe that these people were the police. Those aren't 10 the facts of this case. 11 In this case, they're wearing a typical SWAT 12 uniform, and my team's worn a very similar uniform with 13 very similar indicia. You know, it's not always bright 14 fluorescent green lettering or something that is high 15 profile that says "Police." And I think in the culture 16 of this country, any reasonable person who saw that 17 group of people dressed the way they were dressed would 18 believe that they were the police. 19 MR. BREEDEN: Okay. We'll go ahead and take a 20 break. We'll go off for a moment here. 21 (A short recess was taken from 11:36 a.m. 22 to 11:42 a.m.) 23 BY MR. BREEDEN: 24 Q. Mr. Fomby, we're back on the record now after a 25 short break.</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p>66</p> <p>1 Have you ever heard of instances where</p> <p>2 criminals will pose as police officers in order to gain</p> <p>3 entry or pull over a vehicle or something like that in</p> <p>4 order to commit their crime?</p> <p>5 A. I've heard of situations like that, yes.</p> <p>6 Q. Yeah. Because somebody's at your front door</p> <p>7 saying, "Hey, we're police officers," that doesn't</p> <p>8 necessarily mean they're police officers; right?</p> <p>9 A. I guess hypothetically, sure.</p> <p>10 Q. Yeah.</p> <p>11 In fact, there's a famous incident where</p> <p>12 somebody was impersonating a California Highway Patrol</p> <p>13 officer to pull over women in remote areas and then he</p> <p>14 would abduct them and commit crimes.</p> <p>15 Are you familiar with that?</p> <p>16 A. I've heard of similar incidents, yes.</p> <p>17 Q. Okay. And would you agree with me that part of</p> <p>18 the purpose behind the waiting requirement of the</p> <p>19 constitution of knock and announce rule is that people</p> <p>20 can come to the door and actually ascertain that it is</p> <p>21 police officers?</p> <p>22 A. Again, I understand the principles behind that,</p> <p>23 but, you know, we're also talking about the reality of</p> <p>24 serving high-risk search warrants against people who are</p> <p>25 armed and are willing to use force against the police.</p>	<p>68</p> <p>1 of a transient location used by multiple people; right?</p> <p>2 A. They didn't know exactly who was inside of the</p> <p>3 location just prior to the operation.</p> <p>4 Q. Yeah. In fact, one of the suspects they were</p> <p>5 looking for was actually wearing an ankle monitor, and</p> <p>6 it hadn't pinged anywhere near the apartment that</p> <p>7 morning; correct?</p> <p>8 A. Not aware of that.</p> <p>9 Q. Well, I guess I'm telling you now, then.</p> <p>10 You certainly wouldn't worry about the suspect</p> <p>11 being inside if he was wearing an ankle monitor and it</p> <p>12 showed him being someplace else, would you?</p> <p>13 A. Well, again, you're talking about multiple</p> <p>14 suspects, and it also doesn't eliminate the potential</p> <p>15 threat at that location. If it is a gang member</p> <p>16 flophouse, as it was described in the record, there is</p> <p>17 potential that other people who are armed and dangerous</p> <p>18 are likely inside of that structure.</p> <p>19 Q. But there was a complete lack of intelligence</p> <p>20 as to who was specifically inside that morning; right?</p> <p>21 A. Well, as I indicated in my report, it would be</p> <p>22 great if SWAT teams had perfect intelligence about who</p> <p>23 they were going to encounter or what their motivations</p> <p>24 were and if they were likely to resist or not, but that</p> <p>25 is not the reality.</p>
<p>67</p> <p>1 Q. Well, yeah, but you agree with me that you</p> <p>2 can't just toss the constitutional requirements aside</p> <p>3 just because you're serving a homicide warrant; right?</p> <p>4 A. Like I said before, the courts have allowed for</p> <p>5 shortened periods of time before entry based on certain</p> <p>6 risk factors. And in this case, this case is a perfect</p> <p>7 example of why officers are allowed to use short periods</p> <p>8 of time to make entry when they're dealing with an armed</p> <p>9 and dangerous suspect.</p> <p>10 Q. Well, so there's a lot to unpack there that I</p> <p>11 would maybe disagree with you on, but you would agree</p> <p>12 this was not an arrest warrant. It was a property-only</p> <p>13 search warrant; correct?</p> <p>14 A. Well, property evidence used in a homicide.</p> <p>15 Q. Yeah. It was a property-only search warrant.</p> <p>16 Do you agree with me that there was no specific</p> <p>17 intelligence that either of the two suspects were inside</p> <p>18 the apartment that morning?</p> <p>19 A. There was probable cause to believe that the</p> <p>20 suspects frequented that location, had access and</p> <p>21 control over that location, and were likely storing</p> <p>22 firearms used in a homicide at that location, so that's</p> <p>23 the intel that the officers had.</p> <p>24 Q. No specific information about where they were</p> <p>25 that morning, and police actually thought this was kind</p>	<p>69</p> <p>1 The reality is that SWAT teams use the best</p> <p>2 available intel, develop a plan based on certain</p> <p>3 tactical principles, and then conduct that operation and</p> <p>4 evaluate things as those threats unfold. And rarely</p> <p>5 does a SWAT team know exactly who's inside of a</p> <p>6 structure prior to the operation.</p> <p>7 Q. Well, the counter reality is they had</p> <p>8 preplanned to use all of this force to enter the</p> <p>9 apartment, and they had no idea if women or children or</p> <p>10 innocent people were inside; right?</p> <p>11 A. Again, if the intel suggested that this was a</p> <p>12 location where people involved in gang activity had</p> <p>13 access to that location -- even during the surveillance,</p> <p>14 a couple of the suspects in a homicide were identified</p> <p>15 coming and going from that unit, left the door open, so</p> <p>16 there was no indication that there were old people,</p> <p>17 little kids, women and children inside of that location.</p> <p>18 Q. Did you review or consider Nevada Revised</p> <p>19 Statute Section 171.1455 at all in your analysis?</p> <p>20 A. I'm not sure what statute that is.</p> <p>21 Q. That's Nevada State statute on deescalation</p> <p>22 techniques.</p> <p>23 A. I believe I may have seen it, but I am not sure</p> <p>24 that I referred to it directly.</p> <p>25 Q. Did you do a Graham versus Connor analysis or</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">70</p> <p>1 refer to Graham versus Connor in your report? I'm not 2 sure that I saw such a section.</p> <p>3 A. I typically do it any time I'm talking about 4 use of force. So if I discussed the use of deadly 5 force, I'm sure I did a Graham analysis.</p> <p>6 Q. Do you agree with me that if I were inside my 7 home sleeping in the early hours of the morning and I 8 felt a person was trying to break into my home, that I 9 would have the right to use deadly force to defend 10 myself and my home?</p> <p>11 A. Again, it's a hypothetical, so if a reasonable 12 person believes that there were intruders, people have a 13 right to self-defense.</p> <p>14 Q. Yeah. And actually, specifically in Nevada, 15 they have the automatic right to use deadly force, don't 16 they?</p> <p>17 A. I am not sure about the Nevada statute.</p> <p>18 Q. Okay. Well, are you aware that at least in 19 some states, all it would take is somebody entering your 20 home before you had the right to use deadly force?</p> <p>21 A. Yeah. Castle doctrine.</p> <p>22 Q. Yes. That's a term that's often used for it.</p> <p>23 And so do you know one way or the other whether 24 Nevada has the castle doctrine?</p> <p>25 A. My understanding is that applies in Nevada,</p>	<p style="text-align: right;">72</p> <p>1 constitutional case law, the fact that people inside the 2 residence may be sleeping at the time the warrant is 3 served requires that police wait a longer amount of 4 time? In other words, a longer amount of time is a 5 reasonable amount of time.</p> <p>6 A. Again, it's up to -- it's based on the totality 7 of circumstances, and so even the courts have not been 8 able to clearly define what that time is, and each case 9 should be evaluated based on the circumstances of that 10 case.</p> <p>11 Q. Have you been made aware of the Jasmine King 12 incident that occurred approximately a year prior to 13 Mr. Williams' case?</p> <p>14 A. Not based -- not in this case. I don't recall 15 seeing that name.</p> <p>16 Q. Okay. Are you aware of any changes to 17 department policy that came about because of the Jasmine 18 King incident?</p> <p>19 A. I don't know that name. Is that the incident 20 involving supposed breaching?</p> <p>21 Q. Yeah. So Jasmine King was a woman. A SWAT 22 team came to serve a warrant on a residence where she 23 was with her children. They did an announce. Ms. King 24 was actually coming to the door to answer it and comply 25 with police when they discharged an explosive breach,</p>
<p style="text-align: right;">71</p> <p>1 yes.</p> <p>2 Q. Okay. And so even further into the 3 hypotheticals, if I was in my home and I thought that 4 intruders who had already fired gunshots at me nine 5 times and broken out my back window where I was only 6 three or four feet from, if I believed that was a 7 situation, I would have the right to use deadly force to 8 defend myself; right?</p> <p>9 A. Well, if you're referring to this case, the 10 question is: Would a reasonable person in Mr. Williams' 11 position believe that the police were at that location 12 or that this was some organized coordinated home 13 invasion? And it's my opinion that no reasonable person 14 would believe that this was an organized coordinated 15 home invasion by a team of people who were using flash 16 bangs and battering rams to make entry.</p> <p>17 Q. But Mr. Williams had six seconds to ascertain 18 that; right?</p> <p>19 A. 16 seconds before the entry.</p> <p>20 Q. All right. Six seconds before the force and 21 the window and the deployment of the noise flash 22 diversionary device; correct?</p> <p>23 A. That's correct, which would have woken him up 24 if he was asleep.</p> <p>25 Q. Do you agree with me, at least under the</p>	<p style="text-align: right;">73</p> <p>1 seriously injuring Ms. King.</p> <p>2 Having explained all of that, were you aware of 3 that incident?</p> <p>4 A. Only from news coverage, but not because of 5 this case.</p> <p>6 Q. Okay. And were you aware of any changes made 7 to department policies as a result of that incident?</p> <p>8 A. My understanding is that explosive breaching 9 was restricted at some point prior to this incident and 10 was not available for high-risk search warrants.</p> <p>11 Q. Well, we can call it explosive breach, but the 12 problem and what was alleged in a later lawsuit is that 13 they failed to abide by the knock and announce rule.</p> <p>14 Are you aware of that?</p> <p>15 A. No, I was not.</p> <p>16 Q. Have you seen that prior lawsuit that was filed 17 against the departments and several members who were 18 also involved in Mr. Williams' incident?</p> <p>19 A. No, I have not.</p> <p>20 Q. Are you aware that that suit was later settled 21 by the defendants?</p> <p>22 A. No. I was not aware.</p> <p>23 Q. Do you think that may factor into your analysis 24 as to the knowledge and training and what is reasonable 25 to these officers, that several of them were already</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

<p style="text-align: right;">74</p> <p>1 sued for violating the knock and announce rule and had 2 to settle a civil rights case against them for that? 3 A. Well, I don't want to speculate on the details 4 of that case. I don't know -- you're just saying it's a 5 knock and announce rule, but that's, again, a very 6 complex area of law, so I don't know exactly what was 7 alleged or why the City settled the case. 8 Q. Are you aware of any changes in the last ten 9 years to Metro's policies and procedures for knock and 10 announce or CET entries either before or after the 11 Williams incident? 12 A. I don't know if there were any specific 13 changes. It would not surprise me that an agency was 14 evaluating their tactics and training and standard 15 operating procedures on a constant basis and updating 16 those. So if there were changes, I would expect for an 17 agency to make updates to their training and their 18 policy. 19 Q. Is it your opinion that a surround and callout 20 method was not feasible for the particular warrant 21 execution here, that CET entry was the only feasible 22 method of entry? 23 A. Well, again, there are differing opinions about 24 tactics in the SWAT world, and if you get a bunch of 25 SWAT officers together, you know, they can go down a</p>	<p style="text-align: right;">76</p> <p>1 factors, a SACO just was not feasible for service of 2 that particular warrant at that particular location? 3 A. Well, based on my review of the evidence, I 4 believe that it was reasonable that the commanders and 5 the team leaders believed that a callout was not the 6 best option on South Nellis because of the multiunit 7 apartment complex with the wrought iron gate around it, 8 which wouldn't allow them to pull their armor close to 9 the front door in positions where they can contain the 10 target location. 11 And so the only other option, if they did try 12 to do a surrounded callout, was to have the officers 13 standing without any kind of cover and no place to 14 retreat to which would expose them to potential gunfire. 15 And so I believe it was a reasonable decision to change 16 tactics and use a CET versus a surrounded callout on the 17 South Nellis target. 18 Q. But do you believe those circumstances actually 19 made the surround and callout not feasible? 20 A. Yes. I believe if you look at the landscape, 21 you know, the only place they could pull the armor was 22 onto the street, which was a far distance from the 23 primary breach point. There was no way for them to get 24 it close to the door, which is where a SWAT team would 25 always want the armor to be in case something goes</p>
<p style="text-align: right;">75</p> <p>1 rabbit hole about which tactics they prefer. The 2 question is: Would a reasonable SWAT team use the same 3 or similar tactics in the same or similar circumstance? 4 So in this operation where they had two 5 separate locations, there's the Duran location and then 6 the South Nellis. You know, South Nellis they decided 7 to use CET, and at the other location, they actually 8 decided to use a surrounded callout. 9 And one of the things I was looking at when I 10 reviewed this case was any evidence that the team 11 refused to use certain tactics or had predetermined that 12 they would always use a CET on an operation, and so what 13 I found is that they actually decided to use a 14 surrounded callout on a related operation based on 15 available intel and the terrain. 16 Q. I think, though, that you just answered or kind 17 of reworded my question in a slightly different way. 18 My question is this: When they're planning to 19 execute the search warrant for the apartment where 20 ultimately Mr. Williams is found inside and killed, they 21 had a choice as to whether they could do that as a CET 22 entry or a SACO, meaning a surround and callout entry. 23 They chose CET entry. 24 Do you believe that was simply the discretion 25 of the officers or do you believe that considering all</p>	<p style="text-align: right;">77</p> <p>1 wrong. And there was no place around the other sides of 2 the structure for the officers to hide if they decided 3 to contain it without armor. 4 MR. BREEDEN: All right. Mr. Fomby, those are 5 all of my questions that I have. 6 Andrew, do you have anything in follow-up? 7 MR. YATES: No, nothing from me. 8 MR. BREEDEN: Okay. We will go off the record 9 at this time. 10 THE COURT REPORTER: Mr. Yates, do you need a 11 copy of the transcript? 12 MR. YATES: Please. 13 (The proceedings concluded at 12:00 p.m.) 14 15 16 17 18 19 20 21 22 23 24 25</p>

Spencer Fomby

Latia Alexander, et al. v. Las Vegas Metropolitan Police Department, et al.

78

1 CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE REASON

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17 * * * * *

18 I, Spencer Fomby, deponent herein, do

19 certify and declare under penalty of perjury the within

20 and foregoing transcription to be my deposition in said

21 action; that I have read, corrected and do hereby affirm

22 my signature to said deposition.

23

24

25

SPENCER FOMBY, Deponent

This ____ day of _____, 2025.

79

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Blanca I. Cano, CCR No. 861, RPR, do hereby declare:

That I reported the taking of the deposition of SPENCER FOMBY, commencing on Tuesday, February 18, 2025.

That prior to being examined, the witness was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true, and accurate record of testimony provided by the witness at said time to the best of my ability.

I further certify (1) that I am not a relative, employee, or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to FRCP 30(e) was not requested.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 2nd day of March, 2025.

Blanca I. Cano

Blanca I. Cano, CCR No. 861, RPR